

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:17-cv-1154-NCT-JLW**

P&L DEVELOPMENT, LLC,

Plaintiff,

v.

**BIONPHARMA INC. and
BIONPHARMA HEALTHCARE LLC,**

Defendants.

**DEFENDANTS’ MOTION TO DISQUALIFY CHARLES CAIN AND
KILPATRICK TOWNSEND & STOCKTON LLP FROM
REPRESENTING PLAINTIFF P&L DEVELOPMENT, LLC IN
THIS ACTION AND FOR DISMISSAL WITHOUT PREJUDICE**

NOW COME the Defendants, Bionpharma Inc. and Bionpharma Healthcare LLC (collectively, “Bion” or “Defendants”), pursuant to Local Rules 7.3 and 83.10e(b), and respectfully move the Court for an order disqualifying Charles Cain and Kilpatrick Townsend & Stockton LLP from representing Plaintiff, P&L Development, LLC (“PLD”) in this action, and for a dismissal of this action without prejudice. In support of this Motion, Bion relies on its Brief in Support of this Motion, and exhibits thereto, certain of which Bion is seeking to file under seal because they contain confidential business information.

In support of this Motion, Bion shows the Court as follows:

1. This action concerns Bion’s alleged breach of four agreements (the “Agreements”). The Agreements are between Bion’s predecessor (Banner Pharmacaps

Inc. (“Banner”)) and PLD’s predecessor (P&L Developments of New York Corporation). At the time the Agreements were drafted and negotiated, Charles Cain served as General Counsel of Banner. It is apparent that Mr. Cain’s responsibilities encompassed the Agreements. Bion has since purchased Banner’s generic pharmaceutical product business (a portion of that business is relevant to this litigation) from Banner’s successor, and Mr. Cain is now the General Counsel of PLD.

2. Mr. Cain should be disqualified from representing PLD. Bion holds the status of Mr. Cain’s former client, as it has purchased the generic pharmaceutical product business that Mr. Cain formerly represented as Banner’s General Counsel. Mr. Cain’s prior work was substantially related to this litigation, as his responsibilities included Banner’s commercial contracts, and it is apparent that he had involvement with the very Agreements at issue. Finally, there is material adversity between Bion and PLD, as they are opposing parties in this lawsuit.

3. Because Mr. Cain has been in communication with PLD’s outside counsel, Kilpatrick Townsend & Stockton LLP, concerning this lawsuit, the disqualification also should extend to Kilpatrick Townsend & Stockton LLP, and this lawsuit should be dismissed without prejudice, so that PLD may retain new counsel if it elects to re-file an action against Bion.

WHEREFORE, Bion prays the Court as follows:

1. To enter an Order:
 - a. Disqualifying Mr. Cain and Kilpatrick Townsend & Stockton LLP

from representing PLD in connection with the claims in this lawsuit;
and

b. Dismissing this lawsuit without prejudice.

2. To expedite briefing on this Motion, given PLD's pending motion for a preliminary injunction and Mr. Cain's and Kilpatrick Townsend & Stockton LLP's ongoing involvement in this action. Pursuant to L.R. 7.3(f), Bion is also filing an unopposed Motion to Shorten Plaintiff's Response Time to ten (10) days and Bion's reply time to five (5) days.

This the 10th day of January, 2018.

/s/ Jon Berkelhammer

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*Attorneys for Defendants Bionpharma Inc. and
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 10, 2018, the foregoing document was served on the following counsel of record via the Court's electronic filing system:

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